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APPELLANT PRO SE:

RICHARD DODD
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD DODD,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 71A05-0605-PC-234
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-9712-CF-550

May 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Richard Dodd, pro se, appeals from the denial of his motion to correct erroneous sentence. On appeal, Dodd raises two issues, which we consolidate and restate as whether the trial court erred when it denied Dodd's motion.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 10, 1997, Dodd and another man broke and entered a gas station on U.S. 20 in northern Indiana. When a police officer responded to a burglar alarm from that location, Dodd fired at the officer. The shot hit the officer in the chest but did not pierce his bullet-proof vest. After a chase, officers arrested Dodd and his companion.

The State charged Dodd with Attempted Murder, as a Class A felony, and Burglary, as a Class C felony. After a jury trial, the court entered judgment convicting Dodd on both counts. The trial court sentenced Dodd to fifty years on the attempted murder count, which was to run consecutive to eight years on the burglary count, for an aggregate sentence of fifty-eight years. Dodd appealed his conviction and sentence. This court affirmed in an unpublished opinion, Dodd v. State, No. 71A03-9809-CR-394 (Ind. Ct. App. July 23, 1999), and the supreme court denied transfer on July 25, 2000.

On August 23, 2000, Dodd filed a pro se petition for post-conviction relief, and the trial court appointed a public defender to represent him. The State filed a response to that petition on October 23, 2002. On September 3, 2003, the trial court granted the public defender's motion to withdraw, and, on March 24, 2004, Dodd filed a pro se amended petition for post-conviction relief. On April 2, 2004, the State filed its response.

On January 4, 2005, Dodd filed a second amended petition for post-conviction relief, to which the State filed its response on March 2, 2005. The trial court held an evidentiary hearing on May 19, 2005, and, after taking the matter under advisement, denied Dodd's petition on August 12, 2005.

On March 17, 2006, Dodd filed a motion to correct erroneous sentence. In that motion, Dodd alleged for the first time that the imposition of consecutive sentences is not authorized by statute. The trial court denied that motion without a hearing. Dodd now appeals.

DISCUSSION AND DECISION

Dodd contends that the trial court erred when it denied his motion to correct erroneous sentence because Indiana Code Section 35-50-1-2 mandates that his sentence cannot exceed fifty-five years. At the time of the offenses,¹ Indiana Code Section 35-50-1-2(c) (1997) ("former Section 35-50-1-2") provided in relevant part:

[E]xcept for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Dodd was convicted of one Class A felony and one Class C felony. He contends that under former Indiana Code Section 35-50-1-2(c), his aggregate sentence may not exceed fifty-five years, the presumptive sentence for the next higher class felony, because (1) the offenses for which he was sentenced constituted a single episode of criminal conduct and

¹ The law that was in effect at the time of the commission of the crime controls the resolution of sentencing issues. Peace v. State, 736 N.E.2d 1261, 1267 (Ind. Ct. App. 2000), trans. denied. Thus, we analyze the sentencing issues using the presumptive sentencing scheme in effect in 1997.

(2) attempted murder was not a crime of violence as contemplated in that statute. We address each argument in turn.

Dodd first argues that the burglary and attempted murder offenses were part of a single episode of criminal conduct and, therefore, that under former Indiana Code Section 35-50-1-2(c) his aggregate sentence may not exceed the fifty-five-year presumptive sentence for the next higher class felony, murder. See Ind. Code § 35-50-2-3 (1997). The State contends that Dodd has waived the issue because he did not raise it on direct appeal and because fundamental error analysis does not apply in post-conviction proceedings.² We conclude that, because the alleged sentencing error is not apparent on the face of the sentencing order, a motion to correct erroneous sentence is an improper remedy.

Our supreme court has recently clarified the issue of when a motion to correct erroneous sentence is appropriate. In Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004), the court stated:

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable. Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the “facially erroneous” prerequisite should henceforth be strictly applied, notwithstanding [Jones v. State, 544 N.E.2d 492 (Ind. 1989), Reffett v. State, 571 N.E.2d 1227 (Ind. 1991), and Mitchell v. State,

² The State’s argument in its brief is based on its reasonable belief that Dodd is appealing from the denial of his request for post-conviction relief. We note that Dodd’s brief does not provide a complete procedural history of this case, and he did not originally file an appendix. In response to an order to show cause issued February 9, 2007, Dodd filed his Response to Show Cause on February 28, 2007, and on March 15, 2007, he filed his Appellant’s Appendix. While the State “retain[ed] the right to Answer [Dodd’s] claims substantively if a later expansion of the record so necessitates it,” Appellee’s Brief at 4 n.4, the State did not file an amended or supplemental brief by the date set in this court’s Order dated March 15, 2007.

726 N.E.2d 1228 (Ind. 2000)]. We therefore hold that a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

(Footnote omitted, emphasis added).

Here, Dodd's contention that his sentence is erroneous requires that we consider the events underlying his convictions. Specifically, in support of his allegation that his convictions constitute a single episode of criminal conduct, Dodd claims that the events underlying those offenses "occurred at the same place, at the same time and under the same circumstances." Appellant's Brief at 5. But the validity of that contention is not apparent on the face of the sentencing order, and we would have to consider the facts by referring to the charging information and/or the trial transcript. This we cannot do. Because the alleged sentencing error is not facially apparent, Dodd's motion to correct erroneous sentence is an improper remedy. See Robinson, 805 N.E.2d at 787. Thus, the trial court did not err when it denied his motion on his claim that the sentence is erroneous because the offenses were part of a single episode of criminal conduct.

Dodd next contends that his aggregate sentence is not authorized by former Indiana Code Section 35-50-1-2 because attempted murder was not a crime of violence as contemplated in that statute.³ As noted above, the limitation on consecutive sentencing

³ In contrast to Dodd's episode of criminal conduct claim, we may consider his crime of violence claim because doing so does not require the court to consider matters outside of the sentencing judgment and relevant statutes. See Robinson, 805 N.E.2d at 787-88 ("When a motion to correct sentence presents a claim that may be resolved by considering only the face of the judgment and the applicable statutory authority without reference to other matters in or extrinsic to the record, such a motion may be expeditiously considered and corrections made without invoking post-conviction proceedings.") (emphasis added).

applies only to nonviolent crimes committed in an episode of criminal conduct. Ind. Code § 35-50-1-2(c) (1997). But, again, we cannot consider whether Dodd's offenses were part of an episode of criminal conduct as contemplated under the consecutive sentencing statute. Thus, regardless of whether attempted murder and burglary were both nonviolent offenses under former Indiana Code Section 35-50-1-2, we cannot determine whether the consecutive sentencing statute should have been applied to limit his aggregate sentence because, as we have held above, the episode of criminal conduct claim is not properly before us on a motion to correct erroneous sentence. Therefore, we conclude that the trial court did not err when it denied Dodd's motion to correct erroneous sentence.

Affirmed.

MAY, J., and MATHIAS, J., concur.